

CHAPTER 11

REPRESENTATION PROCEDURES¹

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. REPRESENTATION PETITIONS

19:11-1.1 Petitions

19:11-1.2. Contents of petition for certification

19:11-1.3 Contents of petition for decertification

19:11-1.4 Petition for certification filed by a public employer

19:11-1.5 Petition for clarification of unit

19:11-1.6 Petition for amendment of certification

SUBCHAPTER 2. PROCESSING OF PETITIONS

19:11-2.1. Validity of showing of interest

19:11-2.2 Investigation of petition

19:11-2.3. Withdrawal or dismissal of petition

19:11-2.4. Posting of notice of petition

19:11-2.5 Public docket

19:11-2.6. Investigation of petition; disposition

19:11-2.7. Intervention

19:11-2.8. Timeliness of petitions

SUBCHAPTER 3. RECOGNITION AS EXCLUSIVE REPRESENTATIVE

19:11-3.1 Recognition as exclusive representative

SUBCHAPTER 4. AGREEMENT FOR CONSENT ELECTION

19:11-4.1 Agreement for consent election

SUBCHAPTER 5. DIRECTED ELECTIONS

19:11-5.1 Directed elections

SUBCHAPTER 6. HEARINGS

19:11-6.1 Who shall conduct; to be public unless otherwise ordered

19:11-6.2 Notice of hearing

19:11-6.3 Duties and powers of hearing officer

19:11-6.4 Unavailability of hearing officer

19:11-6.5 Rights of parties

19:11-6.6 Rules of evidence

19:11-6.7. Stipulations of facts

19:11-6.8 Objection to conduct of hearing

19:11-6.9. Motions

19:11-6.10 Review of rulings

19:11-6.11 Waiver of objections

19:11-6.12 Filing of brief and oral argument at hearing

19:11-6.13 Continuance or adjournment

19:11-6.14 Misconduct

SUBCHAPTER 7. HEARING OFFICER'S REPORT; TRANSFER OF CASE TO THE COMMISSION, AND ACTION BY THE COMMISSION

19:11-7.1 Submission of the hearing officer's report to the Commission

19:11-7.2 Record in the case

19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs

19:11-7.4 Action by the Commission; consolidation or severance of proceedings; decision in the absence of exceptions

SUBCHAPTER 8. REQUEST FOR COMMISSION REVIEW

19:11-8.1 Filing of request

19:11-8.2 Grounds for granting a request for review

19:11-8.3 Contents of request for review; timely presentment of facts

19:11-8.4. Statement in opposition to a request for review; further statements

19:11-8.5 Waiver of right to request review

19:11-8.6 Stay of decision; filing of briefs with the Commission; Commission consideration

19:11-8.7 Decision by the Commission

SUBCHAPTER 9. TRANSFER TO THE COMMISSION; RECONSIDERATION

19:11-9.1 Transfer to Commission on its own motion

19:11-9.2 Oral argument

19:11-9.3. Motion for Commission reconsideration

SUBCHAPTER 10. ELECTION PROCEDURES

19:11-10.1 Eligibility list

19:11-10.2 Notices of election; improper use of notices

19:11-10.3 Election procedures

19:11-10.4 Runoff elections

19:11-10.5 Rerun elections

19:11-10.6 No majority representative

19:11-10.7 Determination of exclusive representative

19:11-1.1 Petitions

(a) Rules concerning who may file are as follows.

1. A petition for certification of public employee representative (RO) may be filed by any public employee or group of public employees, or by any individual or employee organization claiming to be the exclusive representative of public employees.

2. A petition for certification of public employee representative (RE) may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to such employer a claim to be recognized or continue to be recognized as the exclusive representative and the public employer has a good faith doubt concerning the majority status of the representative of its employees.

3. A petition for decertification of public employee representative (RD) may be filed by any public employee or group of public employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees and that the employees no longer desire to be represented by any employee representative. A public employer may not file a petition for decertification of public employee representative.

4. A petition for clarification of unit (CU) may be filed by the exclusive representative or public employer.

5. A petition for amendment of certification (AC) may be filed by an employee organization.

(b) An original and four copies of all petitions shall be filed with the Director of Representation. All petitions shall be in writing. The Director of Representation shall serve a copy of the petition upon the other parties. Forms for filing such petitions will be supplied upon request. Address such requests to: Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429. Forms may also be downloaded from the Commission's website: <http://www.state.nj.us/perc>.

19:11-1.2. Contents of petition for certification

(a) A petition for certification of public employee representative filed by a public employee, a group of public employees, any individual, or an employee organization shall contain:

1. The name, address, and telephone number of the public employer and the name and title of the person to contact, if

known;

2. A description of the collective negotiations unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

3. The name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable collective negotiations agreement, if known to the petitioner;

4. The names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;

5. Any other relevant facts;

6. The name and affiliation, if any, of the petitioner and its address and telephone number;

7. The name, address, title, and telephone number of the petitioner's representative;

8. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief.";

9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate. An alphabetical list of such designations also shall be submitted to the Director of Representation; and

10. A petition for certification of public employee representative shall state whether the petitioner seeks certification on the basis of its having submitted authorization cards signed by a majority of employees in the unit alleged to be appropriate and there being no other employee organization seeking to be the majority representative. The petitioner shall submit the authorization cards upon which it is relying.

19:11-1.3 Contents of petition for decertification

(a) A petition for decertification of public employee representative shall contain:

1. A statement that the employee representative certified by the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiations unit in which it is currently recognized or certified;

2. The information required by N.J.A.C. 19:11-1.2 (Contents of petition for certification), except paragraph (a)9;

3. The petition for decertification shall be accompanied by a showing of interest of not less than 30 per cent of the employees in the unit in which an exclusive representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified employee representative or by any other employee representative.

19:11-1.4 Petition for certification filed by a public employer

(a) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public employer has a good faith doubt concerning the majority status of the representative of its employees.

(b) A petition for certification of representative filed by a public employer shall include all of the information set forth in N.J.A.C. 19:11-1.2, except paragraph (a)9.

19:11-1.5 Petition for clarification of unit

(a) The exclusive representative or the public employer may file a petition for clarification of unit.

(b) A petition for clarification of unit shall contain:

1. A description of the present negotiations unit and the date of the certification or recognition, if known;

2. A description of the proposed clarification of the unit;

3. A statement by petitioner listing and explaining fully the reasons for the proposed clarification. The reasons may include:

i. Changed circumstances;

ii. Creation of a new position or title;

iii. Dispute over a title in a newly certified/recognized negotiations unit;

iv. New operation or facility;

v. Statutory exclusions;

vi. Any other reasons why the petition is appropriate; and

4. The information required by paragraphs (a)1, and (a)4 through (a)8 of N.J.A.C. 19:11-1.2.

19:11-1.6 Petition for amendment of certification

(a) An employee organization may file a petition for amendment of certification issued by the Commission for the purpose of recording a change in the name or in the affiliation of the exclusive representative.

(b) A petition for amendment of certification shall contain:

1. The name of the employer and the name of the certified employee organization involved;

2. The address of the public employer;

3. An identification and description of the existing

certification;

4. A statement by the petitioner setting forth the reason for the desired amendment;

5. The name, the affiliation, if any, and the address of the petitioner;

6. Any other relevant facts; and

7. This dated and signed certification by the petitioner or its representative: "I declare that I have read the above petition and that the information is true to the best of my knowledge and belief."

(c) A petition for amendment of certification shall be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit shall specify that:

1. The membership was given advance and adequate notice of the election, as evidenced by an attached copy of a notice of election and a statement of the date of the notice and the manner in which it was provided to members;

2. The election was conducted by secret ballot, as evidenced by an attached copy of the ballot, and was held within six months of the filing of the petition;

3. A majority voted in favor of the change in name and affiliation, as evidenced by a document setting forth the results; and

4. The organization's officers and the unit structure remain unchanged.

(d) A petition for amendment of certification will be served by the Director of Representation on all organizations that are part of a certified majority representative. Each organization will be given an opportunity to request intervention under N.J.A.C. 19:11-2.7. If intervention is permitted, the petition will be dismissed if any intervening organization objects to processing the petition.

19:11-2.1. Validity of showing of interest

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. Neither the nature nor the size of the showing of interest shall be divulged. The showing shall be returned to the petitioner once the case is closed.

19:11-2.2 Investigation of petition

(a) Upon the filing of any petition, the Director of Representation shall investigate the petition to determine the facts.

(b) The Director of Representation shall determine whether or not a valid question concerning the representation of employees exists in a prima facie appropriate unit.

19:11-2.3. Withdrawal or dismissal of petition

(a) If the Director of Representation determines after an investigation that any petition has not been timely filed; or, in a petition for certification or decertification, that no valid question concerning the representation of employees exists in a prima facie appropriate unit; or, in a petition for clarification of unit, that there is no dispute concerning the composition of the unit of public employees, the Director may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, within a reasonable time may dismiss the petition.

(b) If it appears to the Director of Representation or the assigned hearing officer that the petitioner has no further interest in processing its petition, the Director or the hearing officer may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such a withdrawal, may dismiss the petition within a reasonable time and after appropriate notice.

(c) Within 15 days after the date a petition has been dismissed, a petitioner may file a motion to reopen with the Director of Representation. The petitioner shall file an original and two copies of such motion, together with proof of service of a copy on all other parties. Any party opposing the motion may file an original and two copies of its response within five days of receipt of the motion, together with proof of service of a copy on all other parties. The motion may be granted based on a showing of extraordinary circumstances or to prevent an injustice.

19:11-2.4. Posting of notice of petition

(a) After the filing of a representation petition, the Director of Representation will direct that the public employer post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Director of Representation.

(b) Such notices shall set forth:

1. The name of the petitioner;
2. The description of the unit involved;
3. In appropriate cases, a statement that the petitioner is seeking certification as the majority representative without an election on the basis of its claim that a majority of employees in the unit have signed authorization cards and no other employee organization is seeking to be the majority representative; and
4. A statement that all interested parties are to advise the Director of Representation in writing of their interest as soon as possible.

(c) The notice shall remain posted for a period of 10 days from the date of receipt by the public employer. The public employer shall certify to the Director of Representation that the notice has been conspicuously posted for a period of 10 days where notices are normally posted and that the notice has not been covered by other material, altered or defaced.

(d) In addition, the public employer shall furnish the Director of Representation with the names, addresses and telephone numbers of all employee organizations which have within the preceding 12 months claimed to represent any of the employees in the requested unit.

(e) The failure of the Director of Representation to direct the posting of such notices or the failure of the public employer to post notices normally shall not serve to delay or invalidate any subsequent Commission action which occurs pursuant to the filing of a petition.

19:11-2.5 Public docket

The Director of Representation shall maintain (at the Commission's offices in Trenton) a public docket of all petitions. Such docket shall contain a copy of the petition but shall not include any showing of interest. The petition shall remain in the public docket until the case is closed.

19:11-2.6. Investigation of petition; disposition

(a) If no agreement for consent election has been reached pursuant to N.J.A.C. 19:11-4.1, the Director of Representation shall conduct a further investigation. The petitioner, the public employer, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the petition. Such submissions shall be simultaneously served upon the parties.

(b) Where the petitioner is seeking to be certified as the majority representative of an appropriate unit on the basis of authorization cards and no other employee organization is seeking to be the majority representative, the Director of Representation shall determine whether a majority of employees in the unit have signed valid authorization cards.

(c) Information disclosed to a staff member in confidence regarding any representation matter shall not be divulged. All files, records, reports, documents or other papers received or prepared by a staff member for purposes of settlement shall be classified as confidential. The staff member shall not produce any confidential records of, or testify in regard to, any settlement discussions conducted by him or her, on behalf of any party in any type of proceeding.

(d) After the investigation of such petition, the Director of Representation shall either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to N.J.A.C. 19:11-2.3;
2. Issue a decision dismissing the petition, if it appears to the Director of Representation that there is not reasonable cause to believe that a valid question concerning representation exists in an appropriate unit;
3. Issue a decision directing an election in an appropriate unit, if it appears to the Director of Representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that an election reflecting the free choice of the employees in the appropriate unit will effectuate the policies of the Act (N.J.S.A. 34:13A-1.1 et seq.);

4. Issue a decision clarifying a unit;
5. Issue a decision amending a certification;
6. Certify the petitioner as the majority representative based on its submission of valid authorization cards signed by a majority of the employees in the appropriate unit; or
7. Take other measures the Director of Representation deems appropriate.

(e) Action by the Director of Representation pursuant to (d) above shall be based on an administrative investigation or a hearing conducted pursuant to N.J.A.C. 19:11-6.1 (Hearings).

(f) A hearing shall be conducted:

1. If it appears to the Director of Representation that substantial and material factual issues exist which, in the exercise of reasonable discretion, may more appropriately be resolved after a hearing; or
2. If it appears to the Director of Representation that the particular circumstances of the case are such that, in the exercise of reasonable discretion, the Director determines that a hearing will best serve the interests of administrative convenience and efficiency.

19:11-2.7. Intervention

(a) Any party seeking to intervene in a representation proceeding must submit a written request to the Director of Representation.

(b) To intervene in a proceeding initiated by a petition for certification, an incumbent employee organization must submit either:

1. Evidence that it is currently certified or recognized in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative) as the exclusive representative of any of the employees sought by the petition; or
2. A current or recently expired collective negotiations agreement covering any of the petitioned-for employees.

(c) An employee organization other than the incumbent representative seeking to intervene in a proceeding initiated by a petition for certification must submit a showing of interest of not less than 10 percent of the employees in the petitioned-for unit or not less than 30 percent of the employees in the unit it claims to be appropriate if it seeks to represent a unit different from that sought by the petitioner.

(d) To intervene in a proceeding initiated by a petition for decertification, the incumbent representative must submit evidence as set forth in (b)1 or 2 above, and express in writing its continued interest in representing the unit of employees named in the petition. Whenever the incumbent representative fails to intervene pursuant to this subsection, the Director may, upon adequate notice, determine without an election that the incumbent organization is no longer the majority representative.

(e) To intervene in a proceeding initiated by a petition for clarification of unit, an employee organization must submit either:

1. Evidence that it is the currently certified or recognized representative of any of the employees named in the petition;

or

2. A current or recently expired collective negotiations agreement covering any of the employees named in the petition.

(f) To intervene in a proceeding initiated by a petition for amendment of certification, an employee organization must submit evidence that it is an organization that is part of the currently certified representative of the employees named in the petition.

(g) A request by an employee organization to intervene in a representation proceeding may be made at any time before:

1. The opening of a hearing held pursuant to N.J.A.C. 19:11-6.1 (Hearings); or
2. The issuance of a decision by the Director of Representation without a hearing, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition); or
3. Approval by the Director of Representation of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

(h) A motion to intervene during a hearing shall comply with N.J.A.C. 19:11-6.9 (Motions), but shall not be granted unless it is accompanied by a valid showing of interest and upon good cause shown which reasonably prevented the moving party from having filed a timely notice to intervene.

19:11-2.8. Timeliness of petitions

(a) Where there is no recognized or certified exclusive representative of the employees, a petition for certification of public employee representative will be considered timely filed provided there has been no valid election within the preceding 12-month period in the requested negotiations unit or any subdivision of the unit.

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

2. In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

(d) For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition filed at any time after the end of the third year of the agreement; an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date and will not bar a petition filed at any time after the end of the first year of the agreement.

19:11-3.1 Recognition as exclusive representative

(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.

(b) The Commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.7, Intervention and N.J.A.C. 19:11-2.8, Timeliness of petitions, provided the following criteria have been satisfied before the written grant of such recognition by a public employer:

1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit;

2. The public employer conspicuously posted a notice, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit;

3. The public employer served written notification on any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification was made at least 10 days before the grant of recognition and contained the information set forth in (b)2 above;

4. Another employee organization has not within the 10-day period notified the public employer, in writing, of a claim to represent any of the employees in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the Director of Representation;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved.

19:11-4.1 Agreement for consent election

(a) Where one or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Director of Representation, that a secret ballot election shall be conducted by the Commission among the employees in an appropriate collective negotiations unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in N.J.A.C. 19:11-2.7 (Intervention).

(b) The parties shall stipulate as to the composition of the collective negotiations unit, and may agree as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designations on the ballot, subject to the approval of the Director of Representation. In the absence of an agreement among the parties as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designation on the ballot, the Director of Representation shall determine those arrangements.

19:11-5.1 Directed elections

A secret ballot election directed by the Commission or the Director of Representation, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition), shall be conducted in accordance with the order of the Commission or Director of Representation set forth in the decision directing the election. All elections shall be conducted under the supervision of the Director of Representation. The Director of Representation may provide an opportunity to the parties to agree upon the dates, hours and places of the election, and the designations on the ballot, subject to his or her approval. The Director of Representation may authorize an officer to convene a conference among the parties for such purpose, at any time after the direction of an election. Absent an agreement among the parties, the Director of Representation shall determine the dates, hours and places of the election, and the designations on the ballot.

19:11-6.1 Who shall conduct; to be public unless otherwise ordered

(a) Hearings in representation proceedings shall be conducted by the Director of Representation or a hearing officer designated by the Director of Representation, unless the Commission or any of its members presides. When conducting a hearing the Director of Representation shall have all the duties and powers of a hearing officer pursuant to this subchapter. Such hearings shall be public unless otherwise ordered, for good cause, by the Director of Representation, the Commission or the hearing officer.

(b) An official reporter shall make the only official transcript

of such proceedings.

(c) Copies of the official transcript will not be provided by the Commission except as provided by law.

(d) Copies of the transcript may be purchased by arrangement with the official reporter, or examined in the Commission's offices during normal working hours. If a transcript of the proceedings is ordered before a recommended decision has been issued, the ordering party shall, at the time of ordering, notify the hearing officer that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the hearing officer for inclusion in the record.

19:11-6.2 Notice of hearing

(a) The Director of Representation shall issue a notice of hearing under the circumstances set forth in N.J.A.C. 19:11-2.6(d) (Investigation of petition; disposition).

(b) A notice of hearing shall be served on all interested parties at least 10 days before the hearing and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the unit claimed to be appropriate;
3. The name of the public employer, petitioner and intervenors, if any;
4. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Hearings under this section of these rules are considered investigatory and not adversarial. Their purpose is to develop a complete factual record upon which the Director of Representation or the Commission may discharge the duties under N.J.S.A 34:13A-6.

(d) Representation hearings and the procedures following such hearings shall be in accordance with these rules.

19:11-6.3 Duties and powers of hearing officer

(a) The hearing officer shall have the duty to inquire fully into the facts.

(b) Before the case is transferred to the Commission, the hearing officer shall have the authority, subject to these rules and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon petitions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the ends of justice would be served;

6. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;

7. Regulate the course of the hearing and, if appropriate, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of a witness refusing to answer any proper question;

8. Hold conferences for settling or simplifying the issues;

9. Except as otherwise provided by these rules, dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Commission and motions to amend pleadings, also, in cases where a report and recommendations shall issue pursuant to N.J.A.C. 19:11-7.1 (Submission of the hearing officer's report to the Commission), to recommend dismissal of cases in whole or in part, and to order hearings reopened;

10. Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

11. Request the parties to state their positions concerning any issue;

12. Take any other necessary action authorized by these rules.

19:11-6.4 Unavailability of hearing officer

(a) If the hearing officer becomes unavailable, the Director of Representation or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both. The parties shall be notified of that designation.

(b) If the hearing officer becomes unavailable after the hearing has been conducted and before a report and recommendations has issued, the Commission may transfer the case to itself to issue a decision.

19:11-6.5 Rights of parties

Any party shall have the right to appear at such hearing in person, or by authorized representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. Five copies of documentary evidence shall be submitted unless the hearing officer permits a reduced number of copies.

19:11-6.6 Rules of evidence

(a) The parties shall not be bound by rules of evidence, whether statutory, common law or adopted by the Rules of Court.

(b) All relevant evidence is admissible, except as otherwise provided by this section.

(c) A hearing officer may, in the exercise of discretion,

exclude any evidence or offer of proof if its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

(d) The hearing officer shall give effect to the rules of privilege recognized by law.

(e) Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing officer's report and recommendations, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

19:11-6.7. Stipulations of facts

(a) In any proceeding stipulations of facts may be submitted.

(b) Stipulations of fact may be accepted by the Director of Representation or the hearing officer for a decision without a hearing.

(c) The acceptance of stipulations of facts by the Director of Representation or the hearing officer may be deemed a waiver of a right to hearing. The parties may also agree to waive a hearing officer's report and recommendations.

19:11-6.8 Objection to conduct of hearing

(a) Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record.

(b) An objection shall not be deemed waived by further participation in the hearing.

(c) During a hearing, the Commission will not review any objection to the rulings of a hearing officer or the conduct of a hearing except by special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b). Review by the Commission shall not stay the conduct of the hearing unless otherwise ordered by the Commission.

19:11-6.9. Motions

(a) All written motions shall briefly state the order or relief sought and, if appropriate, shall be supported by affidavits.

1. An original and two copies of a motion and any response to a motion made before the designation of a hearing officer shall be filed with the Director of Representation, together with proof of service of a copy on all other parties.

2. An original and two copies of a motion and any response to a motion made after the designation of a hearing officer and before the issuance of hearing officer's report and recommendations shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

3. An original and nine copies of a motion and any response to a motion made after the issuance of hearing officer's report

and recommendations shall be filed with the Commission, together with proof of service of a copy on all other parties.

(b) Answering arguments, documents or affidavits, if any, must be served on all parties and shall be filed with the Director of Representation, hearing officer or Commission as set forth in (a)1, 2, or 3 above, within five days of service of the moving papers, unless otherwise ordered, except that a hearing officer may permit a response to a motion made during a hearing to be made in the same manner.

(c) No further arguments, documents or affidavits shall be filed except by leave granted by the Director of Representation, hearing officer or Commission as set forth in (a)1, 2, or 3 above. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(d) The Commission may rule upon all motions filed after issuance of the hearing officer's report and recommendations or may refer the motion to the hearing officer.

(e) The Commission, Director of Representation, or hearing officer, as applicable, may decide to hear oral argument or take testimony on any motion. The parties shall be notified of the time and place of hearing argument or taking testimony.

(f) All motions, responses, rulings and orders shall be part of the record.

19:11-6.10 Review of rulings

Interlocutory rulings by a hearing officer or by the Director of Representation shall not be appealed directly to the Commission, except by special permission pursuant to N.J.A.C. 19:14-4.6(b).

19:11-6.11 Waiver of objections

An objection not duly raised before a hearing officer shall be deemed waived unless the Commission excuses the failure to raise the objection because of extraordinary circumstances.

19:11-6.12 Filing of brief and oral argument at hearing

(a) Any party shall be entitled, upon request, to a reasonable period before the hearing closes for oral argument, which shall be included in the official transcript of the hearing.

(b) Any party shall be entitled, upon request made before the hearing closes, to file a brief or proposed findings and conclusions, or both, with the hearing officer, who may fix a reasonable time for such filing.

(c) A request for an extension of time for good cause shown shall be made to the hearing officer, together with proof of service of a copy on all other parties.

(d) No request will be considered unless received before the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing officer.

(e) Five copies of any brief or proposed findings and

conclusions shall be filed with the hearing officer, together with proof of service of a copy on all other parties.

19:11-6.13 Continuance or adjournment

At the discretion of the hearing officer, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement at the hearing by the hearing officer, or by other appropriate notice.

19:11-6.14 Misconduct

Misconduct at any hearing before a hearing officer or the Commission shall be grounds for summary exclusion from the hearing. Misconduct of an aggravated character by a representative of a party shall be grounds for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

19:11-7.1 Submission of the hearing officer's report to the Commission

After the hearing, the hearing officer shall prepare a report and recommendations which shall include findings of fact, conclusions of law, and a recommendation as to the action to be taken. The hearing officer shall file the original with the Commission and shall serve a copy on the parties. Service shall be complete upon mailing and the case shall then be deemed transferred to the Commission.

19:11-7.2 Record in the case

The record shall consist of the petition, notice of hearing, motions, rulings, orders, any official transcript of the hearing, stipulations, documentary evidence, together with the hearing officer's report and recommendations and any exceptions, cross-exceptions, briefs and answering briefs.

19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs

(a) Within 10 days of service on it of a report and recommendations or such longer period as the Commission may allow, any party may file with the Commission an original and nine copies of any exceptions to the report and recommendations or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the report and recommendations. A request for an extension of time to file exceptions or briefs shall be in writing and shall state the other parties' positions with respect to such request. Filings under this subsection shall be accompanied by proof of service of a copy on all other parties.

(b) Exceptions to a hearing officer's report and recommendations shall:

1. Specify each question of procedure, fact, law or policy to which exception is taken;

2. Identify that part of the report and recommendations to which objection is made;

3. Designate by precise page citation the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities, unless set forth in a supporting brief. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission.

(c) Any exception which is not specifically urged shall be deemed to have been waived.

(d) Any exception which fails to comply with the foregoing requirements may be disregarded.

(e) Any brief in support of exceptions shall not contain any matter outside the scope of the exceptions and shall contain, in the order indicated:

1. A concise statement of the case containing all that is material to the consideration of the questions presented;

2. A specification of the questions to be argued;

3. The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(f) Within five days of service on it of exceptions, or such longer period as the Commission may allow, a party opposing the exceptions may file an original and nine copies of an answering brief, limited to the questions raised in the exceptions and in the brief in support of exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(g) Within five days of service on it of exceptions, or such longer period as the Commission may allow, any party that has not previously filed exceptions may file an original and nine copies of cross-exceptions to any portion of the hearing officer's report and recommendations, together with a supporting brief, in accordance with N.J.A.C. 19:11-7.3(b), together with proof of service of a copy on all other parties. Filings, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(h) Within five days of service on it of cross-exceptions, or such longer period as the Commission may allow, any other party may file an original and nine copies of an answering brief in accordance with the provisions of N.J.A.C. 19:11-7.3(f), limited to the questions raised in the cross-exceptions, together with proof of service of a copy on all other parties. Filing, service, and proof of service of a request for an extension of time shall conform to N.J.A.C. 19:11-7.3(a).

(i) No further briefs shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

(j) Any matter not included in exceptions or cross-exceptions may not be urged before the Commission in any proceeding.

19:11-7.4 Action by the Commission; consolidation or severance of proceedings; decision in the absence of exceptions

(a) The Commission shall adopt, reject or modify the hearing officer's report and recommendations. The Commission may decide the matter upon the record or after oral argument. It may also reopen the record and receive further evidence. A decision, order or direction of the Commission shall set forth findings of fact and conclusions of law. A decision, order or direction of the Commission that disposes of the case in its entirety shall be a final administrative determination.

(b) Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Commission or Director of Representation may order any proceeding to be severed from or consolidated with any other proceeding.

(c) If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

19:11-8.1 Filing of request

(a) Within 10 days of service on it of the Director of Representation's decision, order or direction, any aggrieved party may file a request for review with the Commission.

(b) An original and nine copies of a request for review shall be filed with the Commission, together with proof of service of a copy on all other parties. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the Director of Representation.

19:11-8.2 Grounds for granting a request for review

(a) The Chairman may grant a request for review. A request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

19:11-8.3 Contents of request for review; timely presentation of facts

(a) A request for review must be a self-contained document enabling the Commission or Chairman to rule on the basis of its contents.

(b) A request must contain a summary of all evidence and rulings bearing on the issues, together with page citations from the official transcript and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the Director of Representation or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

(d) A request for review must specify both the grounds supporting review and address the merits of the issues for which relief is sought.

19:11-8.4. Statement in opposition to a request for review; further statements

Within seven days of service on it of a request for review, any party may file with the Commission an original and nine copies of a statement in opposition to the request, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties.

19:11-8.5 Waiver of right to request review

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any Commission proceeding, any issue which was or could have been raised in the proceeding.

(b) A Commission order disposing of a case in its entirety, or a Commission order denying a request for review of a decision, order or certification issued by the Director of Representation disposing of a case in its entirety shall constitute the final administrative determination of the Commission.

19:11-8.6 Stay of decision; filing of briefs with the Commission; Commission consideration

(a) The granting of a request for review shall not stay the Director of Representation's decision unless otherwise ordered by the Commission.

(b) Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review.

(c) Any request for review may be withdrawn with the permission of the Commission before issuance of a Commission decision.

19:11-8.7 Decision by the Commission

The Commission shall proceed upon the record to decide the issues referred to it or to review the decision of the Director of Representation. It shall affirm or reverse the decision of the Director of Representation, in whole or in part, or make such other disposition of the matter as it deems appropriate.

19:11-9.1 Transfer to Commission on its own motion

The Commission may, at any time, on its own motion, transfer a case to itself for appropriate action.

19:11-9.2 Oral argument

Any request for oral argument before the Commission shall be in writing on a separate piece of paper and filed simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:11-7.3 (Exceptions; cross-exceptions; briefs; answering briefs), together with proof of service of a copy on all other parties. The Commission shall notify the parties if the request for oral argument is granted and of the time and place of any oral argument.

19:11-9.3. Motion for Commission reconsideration

After a Commission decision has been issued, a party may move for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission. A request for leave shall be in writing, accompanied by proof of service of a copy on all other parties. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Commission decision, unless otherwise ordered by the Commission. A motion for reconsideration need not be filed to exhaust administrative remedies.

19:11-10.1 Eligibility list

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the public employer is required to file simultaneously with the Director of Representation and with the employee organization(s) an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. In addition, the public employer shall file a statement of service with the Director of Representation. In order to be timely filed, the eligibility list must be received by the Director of Representation no later than 10 days before the date of the election. The Director of Representation shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

(b) Failure to comply with the requirements of this section

may be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-10.3(h). Additionally, the Director of Representation may, in the exercise of reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance, may institute appropriate enforcement proceedings pursuant to court rules.

(c) Actions of the Director of Representation pursuant to this section shall not be reviewable under N.J.A.C. 19:11-8.1 (Request for review).

19:11-10.2 Notices of election; improper use of notices

(a) Notices of election shall be provided by the Director of Representation to the public employer for posting. The employer shall post such notices where notices are normally posted affecting the employees involved in the election. Such notices shall remain posted until the ballots are counted and shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, and the date(s), hours and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the Commission's official ballot which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

19:11-10.3 Election procedures

(a) All elections shall be by secret ballot and shall be conducted under the supervision and direction of a Commission agent. The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Director of Representation to remove its name from the ballot. The request must be received not later than five days before the date of the election or the mailing of ballots to the eligible voters. Such request shall be subject to the approval of the Director of Representation whose decision shall be final. In a proceeding involving a public employer-filed petition or a petition for decertification, the employee organization that is certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Director of Representation, disclaiming any representation interest among the employees in the unit.

(c) The eligible voters shall be those employees included within the unit described in the agreement for consent election or as determined by the Commission or Director of Representation, who were employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in the military service, and those on leaves of absence. In a manual ballot election, employees must appear in person at the polls in order to be

eligible to vote. Ineligible to vote are those employees who have retired or quit or were discharged for cause prior to the commencement of the election and who have not been rehired or reinstated before the counting of ballots.

(d) Unless otherwise approved by the Director of Representation or by the election agent, all observers shall be non-supervisory employees of the public employer. Each party shall be allowed an equal number of observers. Observers shall:

1. Act as checkers at the voting place and in the counting of the ballots;
2. Assist in the identification of voters;
3. Challenge the eligibility of voters and ballots; and
4. Otherwise assist the election agent.

(e) An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted before a person casts a ballot and shall be recorded in writing specifying the name of the challenged person, the name of the challenging party, and the reason for the challenge. All persons whose names do not appear on the eligibility list maintained by the Commission election agent shall automatically be challenged by the election agent. A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope after the voter marks the ballot, which sealed envelope shall be dropped in the ballot box. At the conclusion of the balloting, the parties may be provided the opportunity to resolve the challenged ballots, subject to the approval of the election agent.

(f) The election agent shall have responsibility for the conduct of the election, and may establish any procedures the agent deems necessary to facilitate the election process and preserve the integrity of the secret ballot.

(g) The ballots shall be counted at a location designated by the Director of Representation or the election agent before the election. Any person may attend and witness the tally subject to such limitation as the Director of Representation or the election agent may prescribe. After the election, the Director of Representation shall furnish the parties with a tally of ballots.

(h) Within five days after the tally of ballots has been furnished, a party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, together with proof of service of a copy on all other parties. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections and shall produce the specific

evidence supporting its claim of irregularity in the election process. Failure to submit such evidence may result in the immediate dismissal of the objections.

(i) If the party filing objections has furnished sufficient evidence to support a prima facie case, the Director of Representation shall conduct an investigation into the objections.

(j) A hearing may be conducted where an administrative investigation into the objections reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the Director of Representation, may more appropriately be resolved after a hearing. After the investigation and any hearing has been completed, an administrative determination will be made either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

(k) If challenged ballots are sufficient in number to affect the results of an election, the Director of Representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots and any hearing has been completed, the Director of Representation shall make an administrative determination which shall resolve the challenges and contain the appropriate administrative direction.

(l) If no objections are filed within five days after the tally of ballots has been furnished, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Director of Representation shall issue to the parties a certification of results of the election, or a certification of representative, where appropriate.

19:11-10.4 Runoff elections

(a) An election with three or more choices on the ballot (for example, at least two representatives and "no representative") that results in no choice receiving a majority of the valid ballots cast will be considered an inconclusive election. In such cases, the Director of Representation shall order a runoff election.

1. Objections, timely filed, shall be disposed of before a runoff election is ordered.

2. The ballot for a runoff election shall provide for a choice between the two choices receiving the largest number of votes in the prior election.

3. Employees who were eligible to vote in the prior election and who continue to be included in the voting unit on the date of the runoff election shall be eligible to vote in the runoff election.

4. The runoff election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures), as applicable.

(b) Only one runoff election shall be held pursuant to this section, but a rerun election may be ordered pursuant to N.J.A.C. 19:11-10.5.

19:11-10.5 Rerun elections

(a) An election will be declared a nullity when objections are sustained pursuant to N.J.A.C. 19:11-10.3. A nullity shall also be declared where an election with three or more ballot choices is inconclusive because either all choices received an equal number of votes or two choices received an equal number of votes and a third choice received a higher number of votes that is less than a majority. If an election is declared a nullity, the Director of Representation shall order a rerun election.

1. The ballot for a rerun election shall have the same choices as provided on the ballot in the prior election.

2. Employees who are eligible to vote pursuant to N.J.A.C. 19:11-10.3(c) shall be eligible to vote in the rerun election.

ⁱ Title 19, Chapter 11 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 34:13A-5.4e, 34:13A-6d and 34:13A-11.

SOURCE AND EFFECTIVE DATE:

R.2010 d.279, effective November 3, 2010.

See: 42 N.J.R. 1691(a), 42 N.J.R. 2968(b).

EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 11, Representation Procedures, expires on November 3, 2017.
See: 43 N.J.R. 1203(a).

3. The rerun election shall be conducted in accordance with N.J.A.C. 19:11-10.3 (Election procedures) as applicable.

(b) The scheduling of further elections pursuant to this section shall be at the discretion of the Director of Representation.

19:11-10.6 No majority representative

In a rerun election, if no ballot choice receives a majority of the valid ballots cast, and there are no unresolved challenged ballots, and all eligible voters have cast ballots, then the Director of Representation may certify the results of the election indicating that no exclusive representative has been chosen.

19:11-10.7 Determination of exclusive representative

The exclusive representative shall be determined by a majority of the valid ballots cast in the election.